



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में निम्न पृष्ठ नंख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 18th December, 1972:—

BILL No. 118 of 1972

A Bill to provide for the administration of the National Library and certain other connected matters.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the National Library Act, 1972. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,— Definitions.
 - (a) "Board" means the Board established under section 3;
 - (b) "Chairman" means the Chairman of the Board;

- (c) "Fund" means the Fund referred to in section 21;
- (d) "Library" means the National Library located at Calcutta;
- (e) "member" means a member of the Board and includes the Chairman;
- (f) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

THE NATIONAL LIBRARY BOARD

Establishment and incorporation of Board.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established for the purposes of this Act, a Board to be known as the National Library Board.

(2) The Board shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and contract and may by that name, sue and be sued.

(3) Notwithstanding anything contained in sub-section (2), the Board shall not, except with the previous approval of the Central Government or of any officer of the Central Government authorised in this behalf by that Government, sell or otherwise dispose of any manuscripts, books, articles or things belonging to the Library.

Composition of Board.

4. (1) The Board shall consist of the following members, namely:—

(a) the Secretary in the Ministry or Department of the Central Government dealing with matters relating to the Library;

(b) the Secretary in the Ministry of the Central Government dealing with finance;

(c) six persons to be nominated by the Central Government of whom—

(i) four shall be from among persons who, in the opinion of the Central Government, are distinguished educationists or have special knowledge of, and experience in, matters relating to the administration of libraries;

(ii) one shall be a representative of any of the universities in India; and

(iii) the other shall be from among persons who, in the opinion of the Central Government, have knowledge of, and experience in, science and technology;

(d) one person to be nominated by the Chairman of the University Grants Commission to represent that Commission;

(e) the Director of the Library, who shall be Member-Secretary.

(2) Every nomination under this section shall take effect as soon as it is notified by the Central Government in the Official Gazette.

5. The Central Government shall appoint a member from among the members of the Board referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 4 as Chairman of the Board.

Appoint-
ment of
Chairman.

6. (1) The term of office of the Chairman and the other nominated members of the Board shall be three years from the date on which they assume office as such.

Term of
office
and fresh
nomina-
tion in
certain
cases.

(2) Any nominated member may resign his office by giving notice in writing to the Central Government and, on such resignation being notified by the Central Government in the Official Gazette, shall be deemed to have vacated his office.

(3) A casual vacancy created by the resignation of a nominated member under sub-section (2) or for any other reason may be filled by fresh nomination by the Central Government or the University Grants Commission, as the case may be, and a member so nominated shall hold office for the remaining period for which the member in whose place he is nominated would have held office.

(4) An outgoing member shall be eligible for re-nomination.

(5) If any nominated member is by infirmity or otherwise rendered temporarily incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government or the University Grants Commission, as the case may be, may nominate another person to act in his place during his absence.

7. No act of the Board shall be invalid merely by reason of—

Vacancies,
etc., not
to invali-
date acts.

(a) any vacancy in, or defect in the constitution of, the Board,
or

(b) any defect in the nomination of the person acting as a
member thereof, or

(c) any irregularity in its procedure not affecting the merits of
the case.

8. (1) Before nominating a person to be a member of the Board, the Central Government or the University Grants Commission, as the case may be, shall satisfy itself that the person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member and the Central Government or the University Grants Commission, as the case may be, shall also satisfy itself from time to time with respect to every member nominated by it that he has no such interest; and any person who is or whom the Central Government or the University Grants Commission, as the case may be, proposes to nominate and who has consented, to be a member shall, whenever requested by the Central Government or the University Grants Commission so to do, furnish to it such information as the Central Government or the University Grants Commission considers necessary for the performance by it of its duties under this sub-section.

Duty of
Central
Govern-
ment and
Univer-
sity
Grants
Commis-
sion nomi-
nating
persons.

(2) A nominated member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board shall, as soon as possible, after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Board and the disclosure shall be recorded in the minutes of the Board and the member shall not take part after the disclosure in any deliberation or decision of the Board with respect to that contract.

Meetings
of Board.

9. (1) The Board shall meet at such times and places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings including the quorum at meetings, as may be provided by regulations made under this Act.

(2) The Chairman or, in his absence, any member chosen by the members present from among themselves, shall preside at a meeting of the Board.

(3) If any member, being an officer of the Government, is unable to attend any meeting of the Board, he may, with the previous approval of the Chairman, authorise any person in writing to do so.

(4) All questions at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairman or, in his absence, the member presiding, shall have a second or casting vote.

Executive
Council.

10. (1) There shall be an Executive Council of the Board consisting of such number of members as the Board may think fit.

(2) The Director of the Library shall be the Chairman of the Executive Council and the other members thereof shall be appointed from among the members of the Board or from outside or partly from among the members of the Board and partly from outside:

Provided that a representative each from the Ministry of the Central Government dealing with finance and the Ministry or Department of the Central Government dealing with culture shall be members of the Executive Council.

(3) The Executive Council shall exercise such of the powers and perform such of the duties of the Board as may be prescribed or as the Board may delegate to it subject to such conditions as the Board may deem fit.

Tempo-
rary
associa-
tion of
persons
with
Board
for
particu-
lar pur-
poses.

11. (1) The Board may associate with itself in such manner and for such purposes as may be provided by regulations made under this Act, any person whose assistance or advice it may desire in performing any of its functions under this Act.

(2) A person associated with it by the Board under sub-section (1) for any purpose shall have the right to take part in the discussions of the Board relating to that purpose, but shall not, by virtue of this section, be entitled to vote.

12. All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf and all other instruments issued by the Board shall be authenticated by the signature of an officer of the Board authorised in like manner in this behalf.

Authenti-
cation of
orders and
other
instru-
ments
of Board.

13. (1) The Central Government shall appoint a person, who in its opinion possesses academical qualifications of distinction or is a distinguished Librarian, as the Director of the Library.

Appoint-
ment of
Director.

(2) The term of office of the Director shall be for a period of five years from the date on which he assumes office:

Provided that the Central Government may extend such term for such further period or periods as it may deem fit.

(3) The Director shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed.

14. (1) Subject to the provisions of sub-section (2), the Board may, for the purpose of enabling it efficiently to perform its functions under this Act, appoint such number of officers and other employees as it may deem fit.

Staff of
Board.

(2) The recruitment and conditions of service of such officers and employees shall be such as may be provided by regulations made under this Act.

15. Subject to the provisions of this Act, every person employed in the Library immediately before the date of establishment of the Board shall, on and from such date, become an employee of the Board with such designation as the Board may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would have held the same on such date as if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Board:

Transfer
of service
of
existing
employees
to Board.

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

16. The Library shall continue to be located at Calcutta.

Location
of
Library.

CHAPTER III

PROPERTY, LIABILITIES AND FUNCTIONS OF THE BOARD

17. (1) On the establishment of the Board—

(i) all properties, funds and dues which are vested in, or realisable by, the Central Government for the purposes of the Library shall vest in, and be realisable by, the Board; and

Property
and lia-
bilities
of Board.

(ii) all liabilities in relation to the Library, which are enforceable against the Central Government, shall be enforceable only against the Board.

(2) All properties, which may, after the establishment of the Board, be given, bequeathed or otherwise transferred to the Library or acquired by the Board shall vest in the Board.

Duties
of Board.

18. (1) It shall be the general duty of the Board to manage the Library and implement programmes for the development of the Library on modern scientific lines (including programmes for photo copying of manuscripts and books) and perform such other functions as the Central Government may, from time to time, assign to the Board.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Board may take such steps as it thinks fit—

(a) for providing for instructions and research in matters relating to libraries and for the advancement of learning and dissemination of knowledge in such matters; and

(b) to do all such other things as may be necessary for the performance of its functions under this Act.

Powers of
Board.

19. (1) Subject to such conditions and restrictions as the Central Government may think fit to impose, the Board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its duties under this Act.

(2) Subject to such regulations as may be made by the Board in this behalf, the Board may, from time to time, purchase or otherwise acquire such manuscripts, books, articles or things as may, in the opinion of the Board, be worthy of preservation in the Library.

CHAPTER IV

FINANCE, ACCOUNTS, AUDIT AND REPORT

Grants by
Central
Govern-
ment to
Board.

20. For the purpose of enabling the Board to perform its functions efficiently under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Board in each financial year such sums of money as that Government considers necessary by way of grant, loan or otherwise.

Fund of
Board.

21. (1) The Board shall maintain a Fund to which shall be credited—

(a) all moneys paid by the Central Government;

(b) all fees and other charges levied under this Act;

(c) all moneys received by the Board by way of grant, gift, donation, benefaction, bequest, subscription, contribution or transfer;

(d) all other moneys received by the Board in any other manner or from any other source.

(2) The Board may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund.

(3) A sum of money not exceeding such amount as may be provided by regulations made under this Act may be kept in current account with any scheduled bank as defined in section 2 of the Reserve Bank of India Act, 1934, or any other bank approved by the Central Government in this 2 of 1934.

behalf but any moneys in excess of that sum shall be deposited in the Reserve Bank of India or with the agents of the Reserve Bank of India or invested in such manner as may be approved by the Central Government.

22. (1) The Board shall by such date in each year as may be specified **Budget**, by the Central Government, submit to it for approval a budget for the next financial year in the form specified by it, showing the estimated receipts and expenditure, and the sums which would be required from the Central Government during that financial year.

(2) If any sum granted by the Central Government remains wholly or partly unspent in any financial year, the unspent sum may be carried forward to the next financial year and taken into account in determining the sum to be provided by the Central Government for that year.

(3) Subject to the provisions of sub-section (4), no sum shall be expended by or on behalf of the Board, unless the expenditure is covered by provision in the budget approved by the Central Government.

(4) Subject to such conditions and restrictions as the Central Government may think fit to impose, the Board may sanction any reappropriation from one head of expenditure to another or from a provision made for one purpose to that for another purpose.

23. (1) The Board shall maintain proper accounts and other relevant **Accounts and audit** records and prepare an annual statement of account including the balance sheet in such form as may be specified, and in accordance with such general directions as may be issued by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Board and the Library.

(4) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded by the Board annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. (1) The Board shall furnish to the Central Government at such **Returns and report** time and in such form and in such manner as the Central Government may direct such returns, statements and particulars as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Board shall, as soon as possible after the commencement of each financial year, submit to the Central Government within such time as may be specified by the Central Government a report giving true and full account of the activities of the Board during the previous financial year and an account of activities likely to be undertaken during the current financial year.

CHAPTER V

MISCELLANEOUS

Power of
Central
Govern-
ment
to issue
directions
to Board.

25. (1) In the performance of its functions under this Act, the Board shall be bound by such directions on questions of policy as the Central Government may give to it from time to time:

Provided that the Board shall be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Delegation
of powers
and duties.

26. The Board, may, by a general or special order in writing, direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised or discharged also by any member, officer or employee of the Board specified in this behalf in the order.

Officers
and em-
ployees
of Board
to be
public
servants.

27. All officers and the employees of the Board (including the Director of the Library) shall, when acting or purporting to act in pursuance of the provisions of this Act or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Protection
of action
taken
under
the Act.

28. No suit, prosecution or other legal proceeding shall lie against the Board or any member, officer or employee of the Board (including the Director of the Library) for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule or regulation made thereunder.

Power of
Central
Govern-
ment
to make
rules.

29. (1) The Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act:

Provided that when the Board has been established no such rule shall be made without consulting the Board.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of filling casual vacancy among the members nominated under clauses (c) and (d) of sub-section (1) of section 4;

(b) the travelling and other allowances payable to a member (including a member of the Executive Council appointed under section 10) and to a person associated with the Board under section 11;

(c) the disqualifications for a person to be nominated as a member of the Board and the procedure to be followed in removing a member who is or becomes subject to any such disqualification;

(d) the method of recruitment to the post of, and the salary and allowances and other terms and conditions of service of, the Director of the Library under section 13;

(e) the conditions subject to which, and the mode in which, contracts may be entered into by or on behalf of the Board;

(f) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30. (1) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with this Act and the rules made thereunder, for enabling it to perform its functions under this Act.

Power of Board to make regulations.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions and restrictions subject to which manuscripts and books in the Library may be used;

(b) the manner in which and the purposes for which persons may be associated with the Board;

(c) the time and place of meetings of the Board, the procedure to be followed in regard to the transaction of business at such meetings and the quorum necessary for the transaction of business at a meeting;

(d) the maintenance of minutes of meetings of the Board and the transmission of copies thereof to the Central Government;

(e) the recruitment and conditions of service of officers and other employees of the Board;

(f) the person by whom and the manner in which, payments, deposits and investments may be made on behalf of the Board;

(g) the maximum amount that may be kept in the current account;

(h) the maintenance of registers and accounts;

(i) the compilation of catalogues and inventories of the manuscripts, books and other articles and things in the Library.

(j) the steps to be taken for the preservation of the manuscripts, books and other articles and things in the Library;

(k) the general management of the Library;

(l) the fees and other charges to be levied for the facilities that may be afforded for photo copying of manuscripts and books in the Library.

(m) the charges that may be levied by way of rent for the use of rooms in the readers' hostel in the Library;

(n) any other matter in respect of which provision is, in the opinion of the Board, necessary for the performance of its functions under this Act.

(3) The Central Government may, after consultation with the Board, by notification in the Official Gazette, amend, vary or rescind any regulation which it has approved and thereupon the regulation shall have effect accordingly but without prejudice to the exercise of the powers of the Board under sub-sections (1) and (2).

STATEMENT OF OBJECTS AND REASONS

The National Library, Calcutta formerly known as Imperial Library, Calcutta, is an institution of national importance. The old Viceregal lodge known as "Belvedere" houses the main Library and a nine storeyed Annexe completed in 1967, Staff quarters and Readers' Hostel. Bound volumes of newspapers are stacked and reading room facilities provided at the Esplanade, which is about 5 km. from the Belvedere. Facilities for consultation are also provided at the Esplanade Reading Room. The Library has nearly 15 lakh books, bound volumes of periodicals, maps, manuscripts, Indian and Foreign Official publications. The National Library, Calcutta is a "Recipient" Library under the Delivery of Books and Newspapers (Public Libraries) Act, 1954 as amended in 1956. The membership rules of the Library are so liberal that any one who has attained the age of 18 can utilise its services. The users of the Library's Reading Rooms represent all levels of the Society. There are general readers, students—under-graduate and post-graduate, research workers, professional men and reputed scholars. The Library is at present functioning as a subordinate office under the Department of Culture.

2. Having regard to the importance and value of the collections in the Library and to the need for reorganising and developing the Library on modern scientific lines on the basis of the recommendations of the Jha Committee which was appointed by the Government of India in 1968 to suggest measures for the improved functioning and future development of this Library, it is considered necessary that it should be run and administered by an autonomous Board under an Act of Parliament. The Bill seeks to give effect to this proposal and makes provision *inter alia* for the following:—

- (1) the establishment of a Board for the administration of the Library and vesting in the Board of the property of the Library;
- (2) the transfer of existing staff to the Board;
- (3) the issue of directions by Government to the Board on questions of policy;
- (4) the submission by the Board of annual budget estimates and reports to Government;
- (5) the deposit of funds in the Reserve Bank, etc.; and
- (6) the annual audit of the accounts of the Board by the Comptroller and Auditor-General.

NEW DELHI;
The 30th November, 1972.

S. NURUL HASAN.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. F. 3-2/72-CAI(2), dated the 6th December, 1972 from Prof. S. Nurul Hasan, Minister of Education, Social Welfare and Culture to the Secretary, Lok Sabha].

The President having been informed of the subject matter of the proposed Bill to provide for the administration of the National Library and certain other connected matters, recommends the consideration of the Bill by the Lok Sabha under clause (3) of article 117 of the Constitution of India.

FINANCIAL MEMORANDUM

Clause 17 of the Bill provides for the transfer of all properties, funds, dues and liabilities of the Central Government in relation to the Library to the Board.

Clause 20 confers power on the Central Government to pay to the Board in each financial year such sums of money as it may think fit to enable the Board to discharge its functions efficiently.

2. The annual recurring expenditure (Non-Plan) on the maintenance of the Library is approximately Rs. 31.00 lakhs. There is also an annual recurring Plan expenditure on the Reorganisation and development of the Library, which is approximately Rs. 6.00 lakhs. A budget provision of Rs. 37.00 lakhs (Rs. 31.00 lakhs for Non-Plan and Rs. 6.00 lakhs for Plan) exists in the current financial year's budget under Demand No. 93—Department of Culture.

3. It is likely that there would also be some non-recurring expenditure on construction of buildings, etc. However, it is not possible to estimate precisely at this stage the amount likely to be required for the purpose but this amount, depending upon the programmes approved and resources available, is not likely to exceed Rs. 100 lakhs during the Fifth Five Year Plan period. This expenditure would have been incurred even if the Library had continued to function as a subordinate office of the Department of Culture.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 29 of the Bill empowers the Central Government to make rules to give effect to the provisions of the Bill. The matters in respect of which such rules may be made relate to the manner of filling casual vacancies among the members, the travelling and other allowances payable to members including associated members and members of the Executive Council of the Board, the disqualifications for membership of the Board and the procedure to be followed in removing members subject to disqualification, the method of recruitment and terms and conditions of service of the post of Director, the conditions subject to which and the mode in which contracts may be entered into by or on behalf of the Board. All these matters are matters of detail and can hardly be provided in the Bill itself.

2. Clause 30 of the Bill empowers the Board to make regulations not inconsistent with the provisions of the Act and the rules made thereunder. The power of making regulations is confined to procedural matters, such as the conditions and restrictions subject to which manuscripts and books in the Library may be used, the recruitment and conditions of service of officers and employees of the Board other than the Director, the time and place of meetings of the Board, the procedure to be followed at such meetings, the maintenance of minutes of meetings of the Board and transmission of copies thereof to Government, appointment of persons to assist the Board in the discharge of its functions, maintenance of registers and accounts, the compilation of catalogues and inventories of books, manuscripts, articles and things in the Library, the fees to be levied for photo copying of manuscripts and books and rents to be charged for the use of rooms in the Readers' Hostel in the Library. The power of making regulations is thus confined to matters of detail only and this power can be exercised by the Board with the previous approval of the Central Government.

2. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 119 OF 1972

A Bill further to amend the Customs Act, 1962, the Gold (Control) Act, 1968 and the Central Excises and Salt Act, 1944.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short
title.

1. This Act may be called the Customs, Gold (Control) and Central Excises and Salt (Amendment) Act, 1972.

CHAPTER II

AMENDMENTS TO THE CUSTOMS ACT, 1962

Amend-
ment of
section
111.

2. In section 111 of the Customs Act, 1962 (hereafter in this Chapter 52 of 1962. referred to as the Customs Act), in clause (m), for the words “any dutiable or prohibited goods which do not correspond in any material particular”, the words “any goods which do not correspond in respect of value or in any other particular” shall be substituted.

Amend-
ment of
section
112.

3. In section 112 of the Customs Act, after clause (ii), the following clauses shall be inserted, namely:—

“(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this

section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding five times the value of the goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees, whichever is the highest.”.

4. In section 123 of the Customs Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—

Amend-
ment of
section
123.

(a) in a case where such seizure is made from the possession of any person,—

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.”.

5. Section 135 of the Customs Act shall be re-numbered as sub-section (1) thereof, and—

Amend-
ment of
section
135.

(i) in sub-section (1) as so re-numbered,—

(a) in clause (i), for the words “five years”, the words “seven years” shall be substituted;

(b) in clause (ii), for the words “two years”, the words “three years” shall be substituted;

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.”.

Insertion
of new
sections
135A and
135B.

6. After section 135 of the Customs Act, the following sections shall be inserted, namely:—

Prepara-
tion.

“135A. If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Power of
court to
publish
name,
place of
business,
etc., of
persons
convict-
ed under
the Act.

135B. (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court.”.

Amend-
ment of
section
136.

7. In section 136 of the Customs Act, in sub-section (1), for the words “two years”, the words “three years” shall be substituted.

8. After section 138 of the Customs Act, the following sections shall be inserted, namely:—

Insertion of new sections 138A and 138B.

'138A. (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Presumption of culpable mental state.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

138B. (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

Relevancy of statements under certain circumstances.

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.'

9. For section 139 of the Customs Act, the following section shall be substituted, namely:—

Substitution of new section for section 139.

"139. Where any document—

(i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place outside India in the course of investigation of any offence under this Act,

Presumption as to documents in certain cases.

and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document."

Insertion
of new
section
140A.

10. In Chapter XVI of the Customs Act, after section 140 the following section shall be, inserted, namely:—

Applica-
tion of
section
562 of
the Code
of Crimi-
nal
Proce-
dure,
1898, and
of the
Proba-
tion of
Offenders
Act,
1958.

"140A. (1) Nothing contained in section 562 of the Code of 50 of 1898. Criminal Procedure, 1898, or in the Probation of Offenders Act, 1958, 20 of 1958. shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 135."

Amend-
ment of
section
156.

11. In section 156 of the Customs Act, in sub-section (2), after clause (f), the following clause shall be added, namely:—

"(g) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules."

CHAPTER III

AMENDMENTS TO THE GOLD (CONTROL) ACT, 1968

Amend-
ment of
section
67.

12. In section 67 of the Gold (Control) Act, 1968 [hereafter in this Chapter referred to as the Gold (Control) Act], for the words "Where and document is produced by any person under this Act or has been seized thereunder from the custody or control of any person and such document is tendered by the prosecution in evidence against him", the words "Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him" shall be substituted.

Amend-
ment of
section
85.

13. Section 85 of the Gold (Control) Act shall be re-numbered as sub-section (1) thereof, and—

(i) in sub-section (1) as so re-numbered, for the portion beginning with the words "shall, without prejudice to any other action" and

ending with the words "which may be less than six months", the following shall be substituted, namely:—

"shall, without prejudice to any other action that may be taken under this Act, be punishable—

(a) if the offence is under clause (i), (ii), (iii), (iv) or (viii) [the offence under clause (viii) being a contravention of sub-section (3) of section 55] and the value of the gold involved therein exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for a term of less than six months;

(b) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.";

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) If any person convicted of an offence under this section, or under sub-section (2) of section 95, is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused."

14. After section 96 of the Gold (Control) Act, the following section shall be inserted, namely:—

Insertion
of new
section
96A.

"96A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under section 85 or section 87 or section 88 or section 89 or sub-section (2) of section 95 shall be deemed to be non-cognisable within the meaning of that Code."

Certain
offences
to be
non-cog-
nisable.

Insertion
of new
sections
98A, 98B,
98C and
98D.

15. In Chapter XV of the Gold (Control) Act, after section 98, the following sections shall be inserted, namely:—

Power of
court to
publish
name,
place of
business,
etc., of
persons
convict-
ed under
the Act.

'98A. (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court.

Presump-
tion of
culpable
mental
state.

98B. (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be open to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Relevancy
of state-
ments
under
certain
circum-
stances.

98C. (1) A statement made and signed by a person before any Gold Control Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.

5 of 1898.
20 of 1958.

98D. (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 85.

Applica-
tion of
section
562 of
the Code
of Criminal
Proce-
dure, 1898,
and of
the Pro-
bation of
Offen-
ders Act,
1958.

16. In section 100 of the Gold (Control) Act, in sub-section (4), for the words "Nothing in this section shall apply to a petty transaction", the following shall be substituted, namely:—

"Nothing in this section shall apply to the acceptance, purchase or other receipt, by way of petty transactions, in the course of a day, of gold up to a quantity of one hundred grammes, by a licensed dealer or refiner or certified goldsmith, as the case may be."

17. In section 114 of the Gold (Control) Act, in sub-section (2), after clause (j), the following clause shall be inserted, namely:—

"(jj) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules made thereunder."

Amend-
ment of
section
100.

Amend-
ment of
section
114.

CHAPTER IV

AMENDMENTS TO THE CENTRAL EXCISES AND SALT ACT, 1944

1 of 1944.

18. Section 9 of the Central Excises and Salt Act, 1944 (hereafter in this Chapter referred to as the Central Excises and Salt Act), shall be re-numbered as sub-section (1) thereof, and—

Amend-
ment of
section
9.

(i) in sub-section (1) as so re-numbered,—

(a) after clause (b), the following clauses shall be inserted, namely:—

"(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;

(bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;" and

(b) for the words "shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees,

or with both.", the following shall be substituted, namely:—

"shall be punishable,—

(i) in the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both.";

(ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;

(iv) the age of the accused."

19. After section 9 of the Central Excises and Salt Act, the following sections shall be inserted, namely:—

Insertion
of new
sections
9A, 9B,
9C, 9D
and 9E.

5 of 1898.

9A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under section 9 shall be deemed to be non-cognisable within the meaning of that Code.

Certain
offences
to be
non-cog-
nisable.

9B. (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

Power of
Court to
publish
name,
place of
business,
etc., of
persons
convict-
ed under
the Act.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

9C. (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Presum-
ption of
culpable
mental
state.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

9D. (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

Relevancy
of state-
ments
under
certain
circum-
stances.

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

Application of section 562 of the Code of Criminal Procedure 1898, and of the Probation of Offenders Act, 1958.

9E. (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age. 5 of 1898.
20 of 1958.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9'.

Insertion of new section 34A.

20. After section 34 of the Central Excises and Salt Act, the following section shall be inserted, namely:—

Confiscation or penalty not to interfere with other punishments.

"34A. No confiscation made or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law."

Insertion of new section 36A.

21. In Chapter VI of the Central Excises and Salt Act, after section 36, the following section shall be inserted, namely:—

Presumption as to documents in certain cases.

"36A. Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.”.

22. In section 37 of the Central Excises and Salt Act,—

Amend-
ment of
section
37.

(i) in sub-section (2), after clause (xx), the following clause shall be inserted, namely:—

“(xxi) provide for the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or of any rule made thereunder.”;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding anything contained in sub-section (3) the Central Government may make rules to provide for the imposition upon any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder, a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater.”.

STATEMENT OF OBJECTS AND REASONS

The Law Commission in its Forty-seventh Report on the "Trial and Punishment of Social and Economic Offences" had made certain recommendations for amending certain statutes like the Customs Act, 1962, the Gold (Control) Act, 1968, the Central Excises and Salt Act, 1944, and the Foreign Exchange Regulation Act, 1947. The Study Team on "Leakage of Foreign Exchange through Invoice Manipulation" had also, in its Report, made certain recommendations for amending some of the aforesaid Acts. This Bill seeks to amend the Customs Act, 1962, the Gold (Control) Act, 1968, and the Central Excises and Salt Act, 1944, in the light of the aforesaid recommendations of the Law Commission and the Study Team. The amendments to these Acts proposed in the Bill mainly seek to make the punishments prescribed thereunder more severe and to make certain other provisions therein with regard to the rules of evidence and procedure with a view to removing the loopholes noticed in the working of these Acts and making their enforcement more effective.

2. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;
The 7th December, 1972.

K. R. GANESH.

Notes on clauses

Clause 2.—This clause seeks to amend section 111 of the Customs Act, 1962, with a view to providing for the confiscation of goods in cases of mis-declaration of value of imported goods irrespective of whether or not such goods are dutiable or prohibited, in order to cover cases of over-invoiced imports.

Clause 3.—This clause seeks to amend section 112 of the Customs Act, 1962, so as to provide that in cases of over-invoiced imports, the penalty imposed may also be relatable to the extent of mis-declaration of value.

Clause 4.—This clause seeks to substitute sub-section (1) of section 123 of the Customs Act, 1962, so as to provide that where any goods to which that section applies are seized in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be not only on the person from whose possession the goods are seized but also on the person, if any, who claims to be the owner thereof.

Clause 5.—This clause seeks to amend section 135 of the Customs Act, 1962. The amendments provide for enhancing the term of imprisonment prescribed in that section in relation to goods which are mentioned in or are notified under section 123 and of which the value exceeds rupees one lakh from five years to seven years and in other cases from two years to three years. Provision has also been made for awarding a term of imprisonment up to a maximum of seven years and a minimum of six months for repeat offences, that is to say, where a person who has been convicted under section 135 or section 136(1) is again convicted under section 135. Provision has also been made therein spelling out the factors which will not be considered as special and adequate reasons to justify the awarding of a sentence of imprisonment for a term of less than six months.

Clause 6.—This clause seeks to insert two new sections 135A and 135B in the Customs Act, 1962. These new sections provide for prosecution and punishment of persons who make preparation to export any goods illegally and empowering the court to publish the names and other relevant particulars of persons convicted by it under the Act.

Clause 7.—This clause seeks to amend section 136 of the Customs Act, 1962, with a view to enhancing the existing term of imprisonment from two years to three years.

Clause 8.—This clause seeks to insert two new sections 138A and 138B in the Customs Act, 1962. The new section 138A raises a presumption as to the culpable mental state on the part of the accused when he is prosecuted in a court of law. The new section 138B provides for the relevancy under certain circumstances of the statements which are not made before a court. This section also provides that such statements will be relevant not only where a person is prosecuted in a court of law but also in departmental adjudication proceedings.

Clause 9.—This clause seeks to substitute a new section for the existing section 139 of the Customs Act, 1962. According to the new section, the court is empowered to raise a rebuttable presumption as to the admissibility and proof of any document where such document is produced or seized from any person under the Act or under any other law or has been received from any place outside India during the investigation of an offence under the Act.

Clause 10.—This clause seeks to insert a new section 140A in the Customs Act, 1962 and provides that the Probation of Offenders Act, 1958 and the provisions of section 562 of the Code of Criminal Procedure, 1898 shall not apply to persons convicted of an offence under the Act unless that person is under 18 years of age.

Clause 11.—This clause seeks to amend section 156 of the Customs Act, 1962 with a view to empowering the Central Government to make rules relating to the publication of names and other particulars of persons who have been found guilty of contravention of any of the provisions of the Act or the rules made thereunder.

Clause 12.—This clause seeks to amend section 67 of the Gold (Control) Act, 1968, which makes provision for presumption as to documents. The amendment proposed under the clause is similar to that proposed in clause 9 of the Bill with respect to section 139 of the Customs Act with the modification that the documents received from abroad, which are not relevant for purposes of gold control, have been excluded from the scope of the provision.

Clause 13.—This clause seeks to amend section 85 of the Gold (Control) Act. The amendment seeks to enhance the maximum term of imprisonment and also provides for punishment for repeat offences. The amendments proposed are on the lines of those proposed in section 135 of the Customs Act, 1962 under clause 5 of the Bill.

Clause 14.—This clause seeks to insert a new section 96A in the Gold (Control) Act, 1968. The new section provides that an offence under section 85 or section 87 or section 88 or section 89 or sub-section (2) of section 95 shall be deemed to be non-cognizable.

Clause 15.—This clause seeks to insert four new sections 98A, 98B, 98C and 98D in the Gold (Control) Act. The provision proposed in the new section 98A is similar to that provided in the new section 135B of the Customs Act under clause 6 of the Bill. The new sections 98B and 98C are on the lines of sections 138A and 138B proposed to be inserted in the Customs Act under clause 8 of the Bill. The new section 98D is on the lines of section 140A proposed to be inserted in the Customs Act under clause 10 of the Bill.

Clause 16.—This clause seeks to amend sub-section (4) of section 100 of the Gold (Control) Act, 1968, with a view to putting a limit to the quantity of the gold that may be acquired by way of petty transactions in the course of a day.

Clause 17.—This clause seeks to amend section 114 of the Gold (Control) Act, 1968, empowering the Central Government to make rules relating to the publication of names and other particulars of persons who have been found guilty of contravention of any of the provisions of the Act or the rules made thereunder. This clause is on the lines of the amendment proposed to section 156 of the Customs Act in clause 11 of the Bill.

Clause 18.—This clause seeks to amend section 9 of the Central Excises and Salt Act, 1944, with a view to providing for prosecution of a person who removes any excisable goods in contravention of the provisions of the Act or in any way concerns himself with such removal or who acquires possession of or is in any way concerned in transporting, selling, purchasing, or otherwise deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or the rules made thereunder. The amendment further makes provision for enhancing the term of imprisonment in respect of more serious and repeat offences and spells out the factors which will not be considered as special and adequate reasons to justify the awarding of a sentence of imprisonment for a term less than six months. The amendments regarding the enhancement of term of imprisonment are on the lines of those proposed to section 135 of the Customs Act, 1962 under clause 5 of the Bill and section 85 of the Gold (Control) Act, 1968 under clause 13 of the Bill.

Clause 19.—This clause seeks to insert five new sections 9A to 9E in the Central Excises and Salt Act, 1944. The provisions proposed in these new sections are on the lines of those proposed in the Gold (Control) Act, 1968 under clauses 14 and 15 of the Bill.

Clause 20.—This clause seeks to insert a new section 34A in the Central Excises and Salt Act, 1944. Under the new section no conviction made or penalty imposed under the Act shall prevent the infliction of any other punishment to which the person convicted thereby is liable under the provisions of the Act or under any other law.

Clause 21.—This clause seeks to insert a new section 36A in the Central Excises and Salt Act, 1944. The new section is on the lines of section 67 of the Gold (Control) Act, 1968, as proposed to be amended by clause 12 of the Bill.

Clause 22.—This clause seeks to amend section 37 of the Central Excises and Salt Act, 1944, for two purposes, namely, to empower the Central Government to make rules relating to the publication of names and other particulars of persons who have been found guilty of contravention of any of the provisions of the Act or the rules made thereunder and also to make rules to provide for the imposition upon any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or the rules made thereunder, a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater,

FINANCIAL MEMORANDUM

Clauses 11, 17 and 22 (i) of the Bill seek to amend section 156 of the Customs Act, 1962, section 114 of the Gold (Control) Act, 1968 and section 37 of the Central Excises and Salt Act, 1944, respectively. Under the amendments proposed in these clauses the Central Government is being empowered to make rules regarding the publication of names and other particulars of persons who have been found guilty of contravention of any of the provisions of the Acts aforesaid or the rules made thereunder. The publication of names in pursuance of the rules to be made under these clauses will be done by the Department concerned at its cost. It is not possible to anticipate accurately the expenditure which would be involved in this regard. However, the expenditure is likely to be of the order of two lakh rupees per annum.

There will be no non-recurring expenditure

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 11, 17 and 22 of the Bill seek to amend section 156 of the Customs Act, 1962, section 114 of the Gold (Control) Act, 1968 and section 37 of the Central Excises and Salt Act, 1944, respectively. Under the amendments proposed in clauses 11, 17 and 22(i) the Central Government is being empowered to make rules regarding the publication of names and other particulars of persons who have been found guilty of contravention of any of the provisions of the Acts aforesaid or the rules made thereunder. The matters with respect to which rules may be so made are matters of procedure and detail.

Clause 22(ii) of the Bill empowers the Central Government to make rules under the Central Excises and Salt Act, 1944, to provide for the imposition of penalty on any person who acquires possession of or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods knowing that they are liable to confiscation. This is also a matter of procedure and detail relating to the penalty that may be imposed in relation to different excisable goods within the specified limits.

The delegation of legislative power is, therefore, of a normal character.

BILL NO. 122 OF 1972

A Bill to alter the name of the Union territory of the Laccadive, Minicoy and Amindivi Islands.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1972.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) “appointed day” means the date appointed under sub-section (2) of section 1 for the coming into force of this Act;

(b) “law” includes any enactment, Ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or any part of the Union territory of the Laccadive, Minicoy and Amindivi Islands.

3. As from the appointed day, the Union territory of the Laccadive, Minicoy and Amindivi Islands shall be known as the Union territory of Lakshadweep.
- Alteration of name of the Union territory of the Laccadive, Minicoy and Amindivi Islands.
4. In article 240 of the Constitution, in clause (1), for entry (b), the following entry shall be substituted, namely:—
- Amendment of article 240 of the Constitution.
- “(b) Lakshadweep;”.
5. In the First Schedule to the Constitution, under the heading “II. THE UNION TERRITORIES”, in entry 3, for the words “The Laccadive, Minicoy and Amindivi Islands.”, the word “Lakshadweep.” shall be substituted.
- Amendment of First Schedule to the Constitution.
6. (1) For the purpose of giving effect to the alteration of the name of the Union territory of the Laccadive, Minicoy and Amindivi Islands by section 3, the Central Government may, before the expiration of one year from the appointed day, by order, make such adaptations and modifications of any law made before the appointed day, whether by way of repeal or amendment as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made.
- Power to adapt laws
- (2) Nothing in sub-section (1) shall be deemed to prevent Parliament or other competent authority from repealing or amending any law adapted or modified by the Central Government under the said sub-section.
7. Notwithstanding that no provision or insufficient provision has been made under section 6 for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.
- Power to construe laws.
8. Where immediately before the appointed day any legal proceedings are pending to which the Administrator of the Union territory of the Laccadive, Minicoy and Amindivi Islands is a party, or the Union of India represented by the said Administrator is a party, then, for the purposes of those proceedings, any reference to the Administrator of the Union territory of the Laccadive, Minicoy and Amindivi Islands shall be construed as a reference to the Administrator of the Union territory of Lakshadweep.
- Legal proceedings.

STATEMENT OF OBJECTS AND REASONS

At the time of States reorganisation in 1956, the Laccadive, Minicoy and Amindivi group of islands were constituted into a Union territory which was given the name "the Laccadive, Minicoy and Amindivi Islands". Since then there has been considerable improvement in the inter-island communication facilities and a feeling of oneness is growing among the inhabitants of these islands. In order to foster this feeling, the Administrator's Advisory Council which consists of representatives of the local people suggested that the islands may be collectively named as "Lakshadweep", the name by which they were known in ancient times. The suggestion was later endorsed by the Home Minister's Advisory Committee for the Union territory. Accordingly, the Bill seeks to alter the name of the Union territory of the Laccadive, Minicoy and Amindivi Islands into "Lakshadweep". The Bill contains the necessary amendments to the provisions of the Constitution and other consequential provisions.

NEW DELHI;

K. C. PANT.

The 8th December, 1972.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 3 OF THE
CONSTITUTION OF INDIA**

[Copy of letter No. 3/3/72-SR, dated the 11th December, 1972 from Shri K. C. Pant, Minister of State in the Ministry of Home Affairs to the Secretary, Lok Sabha.]

The President having been informed of the subject-matter of the Bill to alter the name of the Union territory of Laccadive, Minicoy and Amindivi Islands, recommends the introduction of the Bill in the Lok Sabha under proviso to article 3 of the Constitution.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to adapt and modify existing laws for the purpose of giving effect to the alteration of the name of the Union territory of the Laccadive, Minicoy and Amin-divi Islands by clause 3. This power will be available only for a period of one year from the appointed day. The adaptations and modifications cannot affect the substance of the laws adapted.

2. The delegation of legislative power is of a normal character.

S. L. SHAKDHER,
Secretary.

